

Congress of the United States
Washington, DC 20510

July 8, 2008

The Honorable Samuel Bodman
Secretary of Energy
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Secretary Bodman:

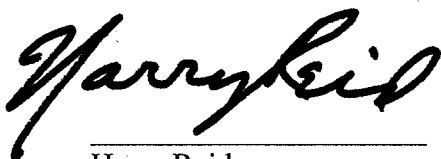
On April 15, 2008, we sent you a letter requesting that the Department of Energy recuse the law firm Morgan Lewis & Bockius (Morgan Lewis) from performing legal services related to the Yucca Mountain project. In light of new information – that the Department exceeded its authority in waiving Morgan Lewis's conflicts of interest – we again request that you recuse Morgan Lewis from working on the Yucca Mountain license application.

As you may be aware, the Justice Department recently sent the enclosed letter to the DOE's Inspector General, stating that the Department never "consulted with or even notified the Department of Justice before entering into an agreement that involved significant conflicts of interest affecting the United States... or executing the purported conflicts waiver." Furthermore, the letter explains that "the Department of Justice, not DOE, possesses plenary authority over matters in Federal court litigation, and DOE could not waive objections by the Department of Justice regarding Morgan Lewis's conflicts."

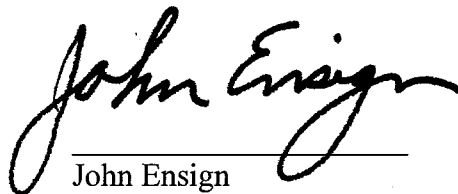
The Justice Department's opinion is clear and unequivocal. The Department of Energy had no authority to waive Morgan Lewis's conflicts of interest with respect to its representation of nuclear utilities in spent nuclear fuel litigation. Permitting Morgan Lewis to continue representing the DOE on the Yucca Mountain license application would challenge the DOJ's authority over matters that are solely under its jurisdiction. Worse, it would demonstrate to the American public that the DOE is willing to use any means necessary to build a repository at Yucca Mountain, including running roughshod over the rights of Nevadans and trampling the authority of the Department of Justice.

While the Department of Energy never responded to our first request, we are hopeful that you take this second request for recusal of Morgan Lewis much more seriously. Thank you for addressing our concerns.

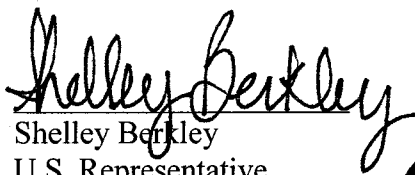
Sincerely,



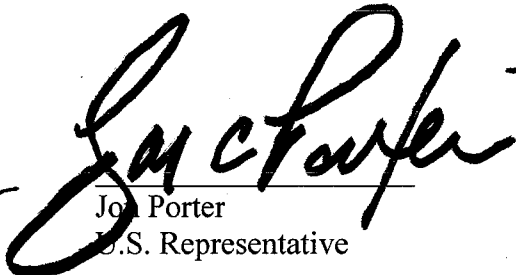
Harry Reid
U.S. Senator



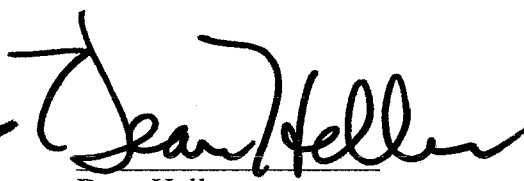
John Ensign
U.S. Senator



Shelley Berkley
U.S. Representative



Jon Porter
U.S. Representative



Dean Heller
U.S. Representative

Encl.

**U. S. Department of Justice****Civil Division**

Washington, D.C. 20530

June 16, 2008

Gregory H. Friedman
Inspector General
Office of Inspector General (IG-1)
Department of Energy
1000 Independence Avenue, N.W.
Washington, D.C. 20585

Dear Mr. Friedman:

This letter is in response to a report that your office recently issued, DOE/IG-0792, entitled "Review Of Alleged Conflicts Of Interest Involving A Legal Services Contractor For The Yucca Mountain Project License Application" (April 2008). We are concerned that your report has made an assumption about the Department of Energy's authority over matters that are in litigation which is unfounded.

The report summarized your office's review of a contract into which the Department of Energy (DOE) has entered with a law firm, Morgan, Lewis & Bockius LLP (Morgan Lewis). We understand that, through this contract, Morgan Lewis will provide DOE with legal services relating to DOE's preparation of a licensing application to, and subsequent adjudication before, the Nuclear Regulatory Commission (NRC) in connection with the construction of a repository for the disposal of spent nuclear fuel (SNF) and/or high-level radioactive waste (HLW) at Yucca Mountain.

As your report indicates, Morgan Lewis also represents several nuclear utilities that are suing the United States in the Court of Federal Claims for breaches of contract by DOE of the Standard Contract For Disposal Of Spent Nuclear Fuel And/Or High-Level Radioactive Waste (Standard Contract). Positions that Morgan Lewis has taken or will take in support of its SNF cases to the Court of Federal Claims may directly conflict with Morgan Lewis's representation of DOE in matters relating to the licensing of Yucca Mountain. Specifically, Morgan Lewis has argued before the Court of Federal Claims that its clients are entitled to damages because of DOE's continuing delay in licensing and opening a Federal repository at Yucca Mountain. Under its new contract with DOE, Morgan Lewis's work may affect the date on which that repository may open in the future, if at all, potentially providing Morgan Lewis with the ability to affect the amount of damages that its clients in the SNF cases will incur.

Mr. Gregory H. Friedman
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Despite this conflict of interest, DOE purported to consent to Morgan Lewis's representation of DOE, and DOE executed a purported waiver of any conflict of interest pursuant to Rule 1.7(c) of the District of Columbia Rules of Professional Conduct. Yet, neither DOE nor Morgan Lewis consulted with or even notified the Department of Justice before entering into an agreement that involved significant conflicts of interest affecting the United States (and its litigation with utilities represented by Morgan Lewis) or executing the purported conflicts waiver. Further, as far as we are aware, no one from the Inspector General's office contacted the Department of Justice to solicit its views regarding these conflicts before issuing your report.

Pursuant to 28 U.S.C. § 516, the Department of Justice, not DOE, possesses plenary authority over matters in Federal court litigation, and DOE could not waive objections by the Department of Justice regarding Morgan Lewis's conflicts. Further, the damages for DOE's partial breach of the Standard Contract are being paid not by DOE but by the Judgment Fund administered by the Department of the Treasury. Thus, the interests of the Judgment Fund and Treasury with regard to any conflict waiver by the United States are critical.

By separate letter, and in accordance with our obligations under Rules 1.1 and 1.3 of the District of Columbia Rules of Professional Conduct to protect the integrity of proceedings before Federal courts, and after consulting with experts regarding ethics issues within the Department of Justice, we have requested that Morgan Lewis provide us with an explanation of the reasons that the safeguards it has implemented adequately protect against the conflicts of interest that its contract with DOE presents. We have attached a copy of that letter here for your consideration.

If you have any questions regarding these matters or would like to arrange for a mutually convenient time to discuss them, please contact me at (202) 514-7300 or Harold D. Lester, Jr., of my office at (202) 616-0478.

Very truly yours,


JEANNE E. DAVIDSON
Director
Commercial Litigation Branch

Attachment